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**FISCAL IMPACT STATEMENT**

**LS 6462**

**BILL NUMBER:** SB 233

**NOTE PREPARED:** Dec 27, 2009

**BILL AMENDED:**

**SUBJECT:** Smoking Ban in Public Places.

**FIRST AUTHOR:** Sen. Dillon

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Prohibit Smoking in Public Places:* The bill prohibits smoking in public places and places of employment, and it provides exceptions to the smoking prohibitions. It prohibits smoking on school buses.

*Declare a Nonsmoking Place:* The bill allows a person who owns or controls an establishment, facility, or outdoor area that does not qualify as a public place or place of employment to declare the area a nonsmoking place.

*Post Signs:* It requires the posting of "no smoking" signs in and the removal of ashtrays from a public place or place of employment.

*Fire or Refuse to Hire:* It prohibits firing or refusing to hire a person for reporting a violation or exercising an obligation under the smoking ban law.

*Indiana State Department of Health:* The bill requires the Indiana State Department of Health (ISDH) or the ISDH's designee to enforce the smoking prohibitions. It requires the ISDH to establish a schedule of civil penalties, and it provides procedures for administering civil penalties for violations. The bill establishes duties for the ISDH, and it provides procedures for administering civil penalties for violations.

*Public Smoking Enforcement Fund:* The bill establishes the Public Smoking Enforcement Fund.

*Local Governments:* The bill allows local governments to adopt more restrictive nonsmoking ordinances.

*Repeal and Conforming Changes:* The bill repeals the current Clean Indoor Air Law and related definitions,

and it makes conforming changes.

**Effective Date:** July 1, 2010.

**Summary of NET State Impact:** *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce revenue from the riverboat wagering tax, riverboat admission tax, and slot machine wagering tax. The smoking prohibition also is estimated to increase payments to replace shortages in riverboat admission tax distributions to local units and state agencies. The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. The table below summarizes the estimated net impact to the state from reduced collections of taxes on the riverboat casinos and racinos as a result of the smoking prohibition.

|                           | <b>Fund</b>  | <b>FY 2011</b>                | <b>FY 2012</b>                |
|---------------------------|--------------|-------------------------------|-------------------------------|
| Gaming Taxes              | General Fund | (\$94.8 M - \$186.5 M)        | (\$94.8 M - \$186.5 M)        |
| Admission Tax Replacement | General Fund | \$0.0                         | (\$2.3 M - \$4.5 M)           |
| Gaming Taxes              | Other Funds  | (\$0.5 M - \$1.2 M)           | (\$0.5 M - \$1.2 M)           |
| <b>Total</b>              |              | <b>(\$95.5 M - \$187.7 M)</b> | <b>(\$97.8 M - \$192.2 M)</b> |

*Other Revenues and Expenditures:* Revenues for the state General Fund could decrease through elimination of a Class B infraction (which may be enhanced to a Class A infraction) and through deposit of civil penalties for violation of the smoking ban established under this bill into a dedicated, nonreverting fund.

The bill will increase costs for the ISDH to adopt rules and for ISDH or its designee to enforce the smoking ban and adopt rules. The increased costs will depend on how ISDH implements its enforcement responsibility.

**Explanation of State Expenditures:** *Riverboat Admission Tax Replacement Payments:* Reductions in riverboat admission tax collections due to the smoking prohibition would increase annual payments made from the state General Fund to offset shortages in admission tax distributions to certain local units, the Division of Mental Health, and the State Fair Commission. It is estimated that the increased payments could total \$2.3 M to \$4.5 M annually beginning in FY 2012.

Under current statute, local units, the Division of Mental Health, and the State Fair Commission, which receive admission tax revenue from the riverboat casinos (excluding the French Lick Casino), are annually guaranteed to receive an amount of revenue equal to the distribution amount received in FY 2002. If the distribution received in a fiscal year is less than the FY 2002 distribution amount, the local unit or state agency receives a payment equal to the shortage from the state General Fund by September 15<sup>th</sup> of the following fiscal year. (Note: The admission tax guarantee does not apply to local units or state agencies receiving admission tax revenue from the French Lick Casino.)

**Background and Details-** *Indiana State Department of Health:* Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the ISDH. However, enforcement responsibilities are not specifically assigned in the statute, which means that the provisions of the law may be enforced by any law enforcement officer. Under the bill, the ISDH will have enforcement responsibility including issuing a

warning and assessing civil penalties. The ISDH is to adopt rules to establish civil penalties and a system to receive reports of violations. It is to inform proprietors of public places and places of employment of the requirements of the chapter and to design and implement a program of education.

The ISDH will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The ISDH could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other local agencies. These management decisions will determine the additional staffing requirements.

The bill's requirements represent an additional workload and expenditure on the agency outside of the agency's routine administrative functions, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program, with new appropriations, or civil penalties placed in the Public Smoking Enforcement Fund discussed below. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Smoking Ban Enforcement in Other States* - A random sample of smoking bans in several other states indicates that generally the state department of health is responsible for enforcement of smoking bans. In most cases, the enforcement responsibility is delegated to the local health departments and/or local law enforcement. Some states only investigate complaints of violations, rather than surveillance of places where smoking is banned. The state policies reviewed include Arizona, Florida, Illinois, Minnesota, Nevada, New York, Ohio, Oregon, and Utah.

**Explanation of State Revenues:** *Gaming Tax Revenue:* The smoking prohibition would apply to: (1) pari-mutuel horse racetracks; (2) off-track betting facilities; (3) facilities where charitable gaming is conducted; (3) riverboat casinos; and (4) racinos. The smoking prohibition also would apply to bars and taverns conducting Type II gaming. The table below summarizes the estimated state revenue loss from taxes imposed on the riverboat casinos and racinos as a result of the smoking prohibition.

| <b>Tax</b>                | <b>Annual Revenue Loss</b>  |
|---------------------------|-----------------------------|
| Riverboat Wagering Tax    | \$80.3 M - \$158.5 M        |
| Riverboat Admission Tax   | \$0.6 M - \$1.4 M           |
| Slot Machine Wagering Tax | \$14.4 M - \$27.8 M         |
| <b>Total</b>              | <b>\$95.3 M - \$187.7 M</b> |

The revenue loss estimates are based on the December 15, 2009, Revenue Technical Committee forecast of FY 2011 adjusted gross receipts (AGR) from gaming at the state's riverboat casinos and racinos and attendance at the riverboat casinos. The lower bound estimates assume attendance reductions of 5% and AGR reductions of 10%. The higher bound estimates assume attendance reductions of 10% and AGR reductions of 20%.

The table below summarizes the estimated state revenue loss by affected fund or agency as a result of the smoking prohibition.

| <b>Fund/Agency Affected</b>                                 | <b>Annual Revenue Loss</b>  |
|---|-----------------------------|
| General Fund  | \$94.8 M -\$186.5 M         |
| West Baden Historic Hotel Preservation and Maintenance Fund | \$0.5 M - \$1.1 M           |
| Indiana Economic Development Corporation                    | \$43,000- \$86,000          |
| <b>Total</b>  | <b>\$95.3 M - \$187.7 M</b> |

The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. Any reductions in these revenue sources would affect the state General Fund, the Build Indiana Fund, the Livestock Industry Promotion and Development Fund, and the State Fair Commission. In FY 2009, the parimutuel taxes generated \$4.2 M, the charity gaming excise tax generated \$1.4 M, and the Type II gaming excise tax generated about \$300,000.

*Repeal:* The bill repeals a Class B infraction for violation of the Clean Indoor Air Law, which may be enhanced to a Class A infraction for three prior, unrelated violations. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgement for a Class A infraction is \$10,000. Judgement revenue is deposited in the state General Fund. There are no statewide data available to indicate the revenue collected or the number of judgments finding violation of the Clean Indoor Air Law.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

*Civil Penalties and the Public Smoking Enforcement Fund:* The bill instructs the ISDH to adopt a schedule of civil penalties that encourages compliance with the smoking prohibition and that ranges between \$100 and \$2,500. The schedule for proprietors of public places and places of employment must be progressive based on the number of prior violations, and civil penalties must be doubled for intentional violations.

The ISDH is to assess the civil penalty and place the revenue in the Public Smoking Enforcement Fund. The Fund is established under the bill to assist the ISDH with enforcing the smoking ban. It consists of grants, appropriations, and revenue from civil penalties. The ISDH administers the fund, and the money in the fund does not revert to the state General Fund.

*Background:* Ohio has a very similar smoking ban including that the health department develops the schedule of civil penalties. For a proprietor, the schedule provides for a warning for a first violation, a \$100 fine for a second, a \$500 fine for the third, a \$1,000 fine for the fourth, and \$2,000 for a subsequent violation. For an individual, the schedule provides for a warning for a first offense and a \$100 fine for each subsequent violation. Between July 1, 2007, and January 9, 2008, the Ohio department of health received \$7,600 in fine revenue.

**Explanation of Local Expenditures:** *Enforcement:* The bill requires the ISDH and the ISDH's designees to enforce the smoking ban. Potential designees of the ISDH include local health departments or local law enforcement (see *Explanation of State Expenditures*), which may increase costs for these agencies. However,

to the extent that local law enforcement is already responsible for enforcement of violations of the indoor air quality law, costs may not increase as much for a law enforcement agency.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; (5) new appropriations from a local unit of government; or (6) state funding from civil penalty revenue through the Public Smoking Enforcement Fund. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

**Explanation of Local Revenues:** *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce distributions to certain local units from the riverboat wagering tax, the riverboat admission tax, the county slot machine wagering tax, and the supplemental slot machine wagering tax. The reduction could total \$5.6 M to \$12.3 M annually. The potential local revenue losses from riverboat taxes beginning in FY 2011 are described in the table below.

| <b>Riverboat Casino Taxes</b> | <b>Annual Revenue Loss</b> |                          |
|-------------------------------|----------------------------|--------------------------|
| <b>Recipients</b>             | <b>Wagering Tax</b>        | <b>Admission Tax</b>     |
| Michigan City                 | \$1.3 M - \$2.4 M          | -                        |
| Rising Sun                    | \$0.5 M - \$1.4 M          | -                        |
| Gary                          | \$0.8 M - \$2.5 M          | -                        |
| Orange County                 | \$0.3 M - \$0.5 M          | \$38,000 - \$76,000      |
| Orleans                       | \$0.1 M - \$0.3 M          | \$9,000 - \$17,000       |
| Paoli                         | \$0.1M - \$0.3 M           | \$9,000 - \$17,000       |
| French Lick                   | \$0.2 M - \$0.5 M          | \$17,000 - \$34,000      |
| West Baden Springs            | \$0.2 M - \$0.5 M          | \$17,000 - \$34,000      |
| Orange County Dev. Commission | \$0.2 M - \$0.5 M          | \$17,000 - \$34,000      |
| Orange County CVB             | \$14,000 - \$28,000        | -                        |
| <b>Total</b>                  | <b>\$3.7 M - \$8.6 M</b>   | <b>\$0.1 M - \$0.2 M</b> |

The potential local revenue losses from slot machine taxes beginning in FY 2011 are described in the table below.

| <b>Slot Machine Taxes</b> | <b>Annual Revenue Loss</b> |                          |
|---------------------------|----------------------------|--------------------------|
| <b>Recipients</b>         | <b>County Tax</b>          | <b>Supplemental Tax</b>  |
| Madison County            | \$0.6 M - \$1.2 M          | -                        |
| Shelby County             | \$0.7 M - \$1.4 M          | -                        |
| French Lick Casino        | -                          | \$0.4 M - \$0.9 M        |
| <b>Total</b>              | <b>\$1.3 M - \$2.6 M</b>   | <b>\$0.4 M - \$0.9 M</b> |

A local unit that is a docksite for a riverboat casino (other than local units receiving wagering tax revenue from the French Lick Casino) receives 25% of the wagering tax generated by the riverboat casino up to a maximum of the distribution amount the local unit received in FY 2002. In the case of the riverboat casinos in Gary, Michigan City, and Rising Sun, wagering tax revenue is estimated to decline under one or both scenarios by an amount sufficient that the 25% share is less than the cap amount.

The local units receiving wagering tax revenue and admission tax revenue from the French Lick Casino, and wagering tax revenue from the racinos, all receive a fixed percentage of this revenue. Therefore, the AGR and attendance declines due to the smoking prohibition would reduce the revenue to these local units.

*Repeal:* Repeal of the infractions for violation of the Clean Indoor Air Law will reduce revenue to local government that would have occurred if court actions are filed and a judgment is entered. The county general fund would have received 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** ISDH.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Revenue Technical Committee Forecast, December 15, 2009. Legislative Services Agency, *Smoking Ban Impacts on Gaming Revenue*, August 20, 2009 (memo presented to the Gaming Study Committee on August 14, 2009). Mandel, L. B. Alamar, and S. Glantz. "Smoke-Free Law Did Not Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 14 (February 2005), pp. 10-12. Glantz, S. And B. Alamar. "Erratum to Mandel, L.L., Alamar, B.C., and Glantz, S.A.. 'Smoke-free Law Did Not Affect Revenue from Gaming in Delaware.'" *Tobacco Control*, vol. 14 (February 2005), pp. 10-12." *Tobacco Control On-Line (Electronic Letters)*, May 23, 2005. Pakko, M. "Smoke-free Law Did Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 15 (February 2006), pp. 68-69. Pakko, M. "No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues." *Applied Economics*, vol. 40 (July-August 2008), pp. 1769-74. Thalheimer, R. and M. Ali. "The Demand for Casino Gaming with Special Reference to a Smoking Bank." *Economic Inquiry*, vol. 46 (April 2008), pp. 273-282. Garrett, T. And M. Pakko. "Casino Revenue and the Illinois Smoking Ban." Working Paper 2009-027A, Research Division, Federal Reserve Bank of St. Louis, Working Paper Series, <http://research.stlouisfed.org/wp/2009/2009-027.pdf>. Lal, A. And M. Siahpush. "The Effect of Smoke-Free Policies on Electronic Gaming Machine Expenditure in Victoria, Australia." *Journal of Epidemiology and Community Health*, vol. 62 (January 2008), pp. 11-15.

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